

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

DAVID P. DONOVAN,

Plaintiff,

v.

BETH A. WILKINSON,

Defendant.

Civil Action No. 1:20-cv-1344

**PLAINTIFF'S NON-CONFIDENTIAL MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO FILE HIS REPLY TO DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION UNDER SEAL**

Plaintiff David P. Donovan (“Plaintiff”), pursuant to Local Civil Rule 5(C) and this Court’s November 17, 2020 Order (ECF 32) and November 23, 2020 Order (ECF 57) (together, the “Order”), respectfully submits this Non-confidential Memorandum in Support of Plaintiff’s Motion to File his Reply to Defendant’s Opposition to Plaintiff’s Motion for Preliminary Injunction Under Seal (“Motion”).¹

On November 17, 2020, the Court issued the Order which concluded that, rather than sealing the entire case as Plaintiff requested, “[t]o the extent that pleadings or hearings involve facts, matters or references that should be kept confidential, those facts, matters or references can be addressed on an individual basis.” [ECF 32.] This Court also ordered that “the existing pleadings and transcripts which currently remain sealed pursuant to Local Rule 5(C) shall remain sealed pending the Magistrate Judge’s decision as to any particular pleading or transcript or portion thereof, as set forth herein.” [Id.] The Order further required the parties to confer and to submit to the Court proposed redactions concerning the existing sealed pleadings, and, to the

¹ All other capitalized terms used herein shall have the same meaning as defined in Plaintiff’s Verified Complaint [Doc. No. 1].

extent the parties do not reach an agreement, then the parties should submit to the Court “ . . . the reasons supporting the parties’ respective positions as to those proposed redactions . . . ” to Magistrate Judge Davis by noon on November 20, 2020. [Id.] Plaintiff’s Reply to Defendant’s Opposition to Plaintiff’s Motion for Preliminary Injunction (“Reply Brief”) contains facts, matters, and references that should be kept under seal, at least until such time the parties have further guidance as to the appropriate scope of proposed redacted to the Reply Brief consistent with the pending rulings on other proposed redactions.

Plaintiff filed a Motion for Clarification of the Court’s November 17, 2020 Order which this Court considered at a hearing held on November 20, 2020, at which Judge Davis presided. At the hearing, the Court concluded that the parties should continue to file under seal any pleadings they believed referred to any information at issue, and that information should remain under seal, at least until the Court could rule on specific record redactions requested by the parties.

On November 20, 2020, Plaintiff submitted to the Court his proposed redactions. And, on November 23, 2020, Judge Davis issued an order in accordance with his conclusions from the November 20 hearing. [ECF 57.]

Plaintiff now seeks to file his Reply Brief under seal with highlighted proposed redactions for the Court’s consideration as the portions Plaintiff moves to seal. These proposed redactions relate to information subject to an agreement, to which Plaintiff is a party, that contains confidentiality provisions. In requesting these redactions, Plaintiff is attempting to adhere to his contractual obligations to maintain the confidentiality of the information at issue while still enforcing his rights. This approach is consistent with this Court’s recognition that honoring a bargained-for confidentiality provision, and protecting the interests of third-parties,

when weighed together against the interest in access, constitutes a compelling basis for sealing. See, e.g., *Lifenet Health v. Lifecell Corp.*, No. 2:13CV486, 2015 WL 12517430 (E.D. Va. Feb. 12, 2015) (holding that protection of third-party interests, coupled with the bargained-for protection of a confidentiality provision, weighed in favor of sealing).

Accordingly, the Court should seal the Reply Brief pending consideration of appropriate redactions and then permit Plaintiff to re-file a redacted copy of the Reply Brief once a determination on the proposed redactions is made.

Respectfully submitted, this the 23rd day of November, 2020,

/s/ *Cathy A. Hinger*

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2020, a true and correct copy of the foregoing was filed using the CM/ECF system, which will send a notification of such filing to all counsel of record and that Plaintiff served a copy of the foregoing by email on all counsel of record.

/s/ Cathy A. Hinger
Cathy A. Hinger, Esq.
